ATTORNEYS AT LAW
Thornton & Naumes LLP

Michael P. Thornton (NH, ME & MA)
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Robert T. Naumes
Neil T. Leifer (ME, NJ & MA)
David J. McMorris (NY & MA)
Edwin L. Wallace
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Michael A. Lesser
Marilyn T. McGoldrick
Garrett J. Bradley (NY & MA)
Brad J. Mitchell
Kristen Marquis Fritz
Zoran Malesevic
Robert T. Naumes, Jr. (CT & MA)
Andrea C. Marino
Christian F. Uehlein

Of Counsel
Elizabeth M. Shost
Admitted in NY & PA only

March 3, 2010

CONFIDENTIAL INFORMATION SUBJECT TO
JOINT PROSECUTION AND WORK PRODUCT PRIVILEGES

VIA EMAIL AND FIRST-CLASS MAIL

J. Mark Kraus, Esq.
Assistant Attorney General
Department of Legal Affairs
The Capitol, PL-01
Tallahassee, Florida 32399-1050

Re: ***The State of Florida , ex rel. FX Analytics v. Bank of New York Mellon., et al.; [UNDER SEAL]: Supplemental Disclosure***

Dear Attorney Kraus:

Relator, FX Insider Trading, is providing this supplemental disclosure of relevant information in the above-referenced *qui tam* case pursuant to the joint prosecution privilege. We are writing to provide supplemental information to Relator's disclosure that has come to the attention of the Relator through the normal course of his employment.

As a preface to this supplement, we wanted to inform you that the Relator is concerned about the security of his identity, as he continues to work at the bank. Things are reaching a fever pitch in the office; the Defendant seems to be aware that at least one of the ex rel. Plaintiffs has recent internal documents in its possession. We respectfully request that any use of documents or information be done in such a way as to minimize the likelihood of Relator's identity becoming discovery. Of course, we realize that the value of this information lies primarily in your ability to make effective use of it. We only ask that it be done in such a way as to protect the Relator's identity, wherever possible.

It is our understanding that the bank is placing one particular employee, A.J. Quitadamo, in the position of answering queries from various pension funds seeking answers related to the

FX services they receive from BNY Mellon. As Mr. Quitadamo was not described in our initial disclosure, we are providing information relevant to his history at the bank in this supplement. We also believe that Sue Pfister, who is mentioned in Relator's disclosure, would be extremely knowledgeable about the practices alleged in the complaint. Finally, other post-filing developments are also discussed.

1. **Arthur "A.J." Quitadamo**

Mr. Quitadamo is a BNY Mellon Senior Vice President based in Boston, Massachusetts. He is, or has been, the Bank's first line of defense on FX pricing query calls. Mr. Quitadamo was the chief dealer of the Boston Safe FX desk before Mellon purchased Boston Safe in the mid 1990's. He continued with BNY Mellon after the merger, transitioning into a different role.

Mr. Quitadamo lives in Westwood, Massachusetts. It is our belief that he is in his mid-fifties. Mr. Quitadamo is smart, well-spoken, and is comfortable in high level meetings. He is perfect for his current position at the bank as the liaison between custody (Asset Servicing) and the FX department. He will understand every question asked of him and will know where you are trying to go before you get there. He has been well compensated for the last twenty years.

In addition to his duties as an intrabank liaison, he is supposed to look for profit making opportunities for the bank and he has been successful at this. He was point man with the FX group's move to work with Mellon Transition Management in San Francisco. He also developed the FX department's regulated currency program where the bank prices indirect deals with the bank's subcustodians around the globe (as described in the disclosure statement). Mr. Quitadamo also is the go-to guy when a problem or question arises with custody.

Relator reports that Mr. Quitadamo has vast knowledge of FX practices across the market. His view of the BNY Mellon FX department is unique. He has been and continues to be involved in merging the two legacy (Bank of New York in New York City, and Mellon Bank in Pittsburgh) FX departments and desks. He knows how both groups operate, knows the government's rules for trading FX, knows custody, has been the architect of many of the bank's money making schemes, and has many years of experience doing this from a trading and sales position.

In discussing the unsealed FX case in California as well as potential similar actions against BNY Mellon, Mr. Quitadamo indicated a willingness to be truthful with the government. As the individual dealing with the multiple inquiries from various pensions, we have reason to believe that he is becoming weary with having to make responses for the bank. It is our understanding that he has admitted to the representatives from at least one pension that: (1) BNY Mellon does not do FX trades on behalf of its custodial clients but rather as a counterparty, and (2) that BNY Mellon gives pensions a price for their FX trades that is right at the end of the range of the day, thus ensuring the largest profit for the bank and the costliest price for the pension. This admission confirms relator's allegations as to the mechanics and motive of the bank's fraud.

2. **Sue Pfister**

The identity of Ms. Pfister as a percipient witness is detailed in Relator's disclosure. She is noted here again because of a recent comment she made concerning the recent developments and because she should be considered as a priority witness because of her knowledge of both the Pittsburgh and New York FX trading desks. Upon learning that BNY Mellon was also the subject of some investigation related to FX pricing, Ms. Pfister's comment was: "It's over, it's all over." The context of this comment includes (1) the notion that the huge indirect FX profits the bank has made historically will disappear, (2) the legacy Mellon (Pittsburgh) desk will be made redundant and the FX desks will be consolidated in New York, with the net result that most FX staff in Pittsburgh will be laid off. As related in our disclosure, we believe that Ms Pfister would be a truthful and knowledgeable witness.

Relator has expressed to us, in no uncertain terms, that the highlighting of the specific conversations noted above would necessarily identify him as the source of the information. We respectfully ask that you consider this fact when crafting discovery or investigatory requests, so that the Relator's current position at the bank is not unnecessarily jeopardized.

3. **Changes in the Pittsburgh FX Trading Room**

Relator has become aware of several other developments in the Pittsburgh trading room, which are described below. We will continue to provide similar updates when appropriate.

The bank's compliance department has developed a new form that everyone in the trading room will be required to sign. It is our understanding that the form sets forth the bank's guidelines for the relationship with customers on FX. The guidelines will state that the bank deals with clients at "an arm's length relationship" with respect to the "non-negotiated/standing instruction/indirect" FX trades.[1] We do not know if any of the guidelines would be transmitted to the FX pension clients, but this change seems consistent with the recent website changes removing the term "free of charge" and redefining the term "best execution" that were detailed in our previous supplement, and AJ Quitadamo's recent admission of the bank's indirect pricing practices.

It is also Relator's understanding that the bank's Asset Servicing and Global Markets divisions are cooperating to develop a new strategy for "indirect" trades going forward. One idea that has been floated is the idea of a "tiered" system: trades under \$100,000 would receive a 20 bps spread, trades at \$100,000 - \$500,000 would receive a 15 bps spread, and trades above \$500,000 would receive a 10 bps spread. This information is an admission that the bank's possibly soon-to-be former practices cheated pension clients. It is also an admission that the

[1] The terms "indirect," "non-negotiated," and "standing instruction," are used interchangeably herein – as the bank also uses them – and all mean the refer to the same channel of trading that results in the bank executing FX trades for custodial clients taking the biggest possible profits by pricing pension fund FX trade rates at the high or low of the day.

bank's pricing system as published on its website is meaningless at best and fraudulent at worst. Of course, this change has not yet occurred and may not, in fact, be implemented. In any case, as shown by the bank's detailed analysis of its own spreads, below, even these tiered spreads are exceptionally large and could not be justified when direct-trading FX customers average spreads of 1-3 basis points for all of their trades.

Further, Relator reports that the 2010 target profit numbers (what they call a "budget" despite the literal meaning) for the NY and Pittsburgh FX desks are now out. In 2009, each desk had the same target of $240 million profit. This year, the Pittsburgh desk's target is $293 million and the NY desk's target is $183 million. Relator feels that this may be part of a more tangible, post-merger, anti-Pittsburgh animus that is starting to come to the fore, and that this may be a prelude to the eventual shut-down of the Pittsburgh FX desk.

Finally, we wish to mention that we have discussed the possibility of "planted" information in the context of the bank trying to determine the identity of the Relator.

4. Additional Documents

In addition to the above information, Relator hereby supplements the original disclosure with the documents described below. Taken as a whole, these documents show (1) the bank has the power to increase its FX spreads at will (2) that the bank's average FX spreads on "indirect" or "non-negotiated" trades is so large as to be at least 10-20 times the actual spread available on the open market (as the bank's reported spreads average anywhere from 19 basis points to 57 basis points for a single calendar month), and (3) that the bank is unable to distinguish any services it provides to make one FX trade different from, and therefore somehow more deserving of a large spread, than another FX trade executed outside the non-negotiated/standing instruction channel.

A. Global Markets Monthly Business Report – FX Trading (Americas); August - October 2009

These three monthly reports (similar to Exhibit H of Relator's Disclosure) show the volume and profit ("spread") made by each of the legacy FX desks in New York and Pittsburgh. The New York FX desk's monthly average spreads, notated as "Standing Instruction Flow Summary," were 19, 18, and 20 basis points for the months of August through October 2009, respectively. The Pittsburgh FX desk, processing approximately three times the amount of Standing Instruction FX volume as New York during the same period of time, averaged spreads of 29, 26 and 30 basis points, respectively. Further, these monthly reports also provide the basis point spread average for the same month of the previous year. These historical monthly FX spreads include spreads of 57 basis points (Pittsburgh in October of 2008), 36 basis points (New York in October of 2008), 35 basis points (New York in September of 2008), and 34 basis points (Pittsburgh in September of 2008). Again, for the sake of reference, a single basis point on a $10,000,000 trade = $1000. Thus, a spread of 36 basis points on a $10,000,000 trade = a charge to the pension of $36,000. As shown below,

these spreads are 10-20 times greater than spreads for clients who do not trade through the non-negotiated/standing instruction channel.

Although these results are driven somewhat by the market volume and FX rate volatility, the only constraint on the bank's profit-taking is the limits of the range of the high and low of the applicable FX rate for each day.

The Global Markets Monthly Business reports for August through October of 2009 are attached hereto as Exhibits A-C.

B. **Global Markets Year-to-Date 2009 Volume Analysis; March 2009**[2]

This document is relevant for two reasons. First, it again highlights the fact that the bank makes exceedingly large profits on the non-negotiated/standing instruction FX trades. On page 6 of this report, the bank notes that as of the date of the report, non-negotiated FX trades represented only 12% of overall FX trade volume, but that 12% resulted in 69% of overall FX revenue.

Second, this report also reiterates that the bank makes exceptionally large profits on the "regulated market" FX currencies, noting that these standing instruction profits are "captive to the custodian," and that the bank earns "the widest spreads in these currencies."

This report is attached as Exhibit D.

C. **Foreign Exchange Business Plan 2010**

The 2010 FX Business Plan is replete with corroboration of Relator's allegations, namely, that the bank willfully and knowingly takes large spreads, the size of which is controlled by the bank so that the bank can make the largest possible profit on each FX trade. Highlights from this document include:

- ***"Near interbank pricing is available to most market participants, and the ubiquity of real time market data exposes those who seek to extract wide spreads; margin compression is here to stay."*** Page 2.

  This bullet is revelatory of the poor performance of the bank's own non-negotiated, standing instruction pricing model, as it is these non-negotiated trades that receive the "wide spreads." It is also worth noting that the pension clients who trade their FX through the non-negotiated channel are not "most market participants," and that they are definitely not getting "near interbank pricing," from BNY Mellon.

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[2] The document is mis-labeled as March 2008.

- ***"Our goal is to capture as much foreign exchange as possible from global assets custodized at BNY Mellon . . ."*** Page 2.

  This fact speaks for itself; the bank makes the majority of its profit from non-negotiated, standing instruction FX transactions. The fact that the bank takes a spread of 10-20 times greater than its direct channels is all the motive necessary to make this assertion.

- ***"Through our standing instruction channel, we provide significant value-added to clients by identifying trade requirements, aggregating and netting exposures, handling pre-trade administration for regulated market transactions, executing trades in accordance with best execution practices, assuring settlement and reporting trade details to back-end accounting systems – all of which allows us to apply wider margins with the willful acceptance of clients."*** Page 2.

  This bullet may be the most telling comment made by the bank with respect to its FX practices, and exists as a post-facto rationalization of practices that were neither agreed to, nor understood by the standing instruction clients. "Identifying trade requirements," is a given in any foreign exchange transaction and deserves no special mention as a "value added" service. Further, as explained in relator's disclosure, any "aggregation" that occurs only inures to the benefit of the bank, not the pension fund clients, because the bank's practice of pricing at the high or low of the day captures bank-only profit. Similarly, Relator reports that no true netting occurs, and that the bank will take a spread on both parts of a "netted" exposure. Based upon Relator's disclosure, the statement "executing trades according to best execution practices," can only be understood as false. There is no question that the bank's practice of pricing standing instruction trades at the end of the high/low range of the day is anything but "best execution." This canard is also unmasked by the bank's own changes to its "standing instruction" website page, as previously documented by Relator's initial supplemental disclosure. The final insult is provided by the bank's admission that it takes "wider margins," on standing instruction trades, but that it is done with the "willful acceptance," of clients. Again, as described in Relator's disclosure, pension fund clients are kept in the dark about the bank's foreign exchange pricing fraud – but their ignorance can never be construed as "acceptance." As demonstrated in the disclosure, standing instruction clients that learn of the bank's FX practices end them – and get better treatment from the bank (e.g. [redacted] and [redacted], as described in Relator's Disclosure).

- ***"This data allows us to identify fund managers who direct a disproportionate share of eligible FX trades to other counterparties and engage in sales tactics to draw this activity back to BNY Mellon."*** Page 9

  The bank is always thinking about the profits that come from standing instruction trades, as this comment about the bank's internal data mining project illustrates. It is plain to see, however, that even if the bank's "sales tactics" work in luring standing instruction business back to the bank, the captured trades will be treated like all other standing instruction trades and priced at the high or low of the day, always to the bank's benefit. The bank itself recognizes this fact, as it also admits, "***In cases where this is not possible (i.e. some large and sophisticated fund managers simply choose not to trade with BNY Mellon) our tactical approach will be to raise spreads on the small percentage of trades left with BNY Mellon, while directing Asset Servicing to increase . . . fees where possible.***"

The 2010 Business Plan is attached as Exhibit E.

D. FX Market Update – Competitive Environment

This Powerpoint presentation, attached to an email from Jorge Rodriguez, again illustrates the bank's knowledge of its chilling effectiveness at reaping profits from its non-negotiated FX trading. The bank is aware, as of October of 2009, that its average margin to date on its non-negotiated FX trades was 23.75 basis points. Based upon this average, the bank also calculates that a $110 billion drop in non-negotiated FX volume results in "a lost revenue opportunity of $253M." The bank also recognizes that "non-negotiated FX" is "under serious attack," estimating that "15-20% of the non-negotiated FX business will not come back under the same attractive terms as we have come to know it once the market rebounds." The bank also recognizes three telling reasons behind this permanent shift in non-negotiated FX profit:

> " – Selective clients are shifting their business to a negotiated model where ***margins decline by a factor of 10-20 times***. Once this is done, they will never return to their previous model;
>
> -- Clients adopt a ***fully transparent execution*** standard built on benchmarking;
>
> -- The competition focuses on this attractive industry segment through aggressive pricing arrangements forcing BNY Mellon ***to reduce its margins***." (emphasis supplied).

These three bullets run counter to all of BNY Mellon's considerable efforts to portray the non-negotiated/standing instruction channel as a true value-added service. The bank is well aware that clients that leave the non-negotiated trading model "will never" return to their

previous FX practices. The bank's conclusion on this point would not be absolute if the non-negotiated/standing instruction trading channel offered any benefit or value to pension fund clients. Appendix 2 to this document also corroborates this fact: The Standing instruction year-to-date average spread was 23.75 basis points as of October 2009. By comparison, the average spreads for direct deals done over the phone or through an electronic platform were, 2.75 and 1.2, respectively. For the sake of clarity, these three basis point spreads represent bank profits of: $23,750, $2750, and $1200, respectively, on a single FX trade of $10,000,000. Thus, despite what the bank markets to its pension fund custodial clients, the bank knows that once non-negotiated/standing instruction clients learn the truth, once they demand "fully transparent execution," they will refuse to continue trading. Finally, this document again reinforces the concept that the bank has complete control over its FX margins in the non-negotiated/standing instruction channel and, unbeknownst to its customers, it can and does increase or decrease their spreads to suit the bank's interests.

This document is attached as Exhibit F.

E. It Is All About Profits

The final document in this supplement is an e-mail from Jorge Rodriquez opining on the increasingly competitive FX market in response to a recent article in the Wall Street Journal. Mr. Rodriguez discusses the notion of two primary FX trading models for banks: "high volume," and "quality spread," characterizing BNY Mellon FX operations as the latter. He describes the BNY Mellon model as one based upon attracting "industry leading market participants," whom offer BNY Mellon an image-boosting "Good Housekeeping Seal of Approval," allowing the bank to attract profitable clients:

> "Bottom line, its (sic) volume verses quality spread business. ***The friendly business we have built our reputation on is undergoing considerable change with increased regulatory demands on our client base to achieve "Best Execution" and the growth in overall pricing transparency***. For us to continually win, I feel we need to do a little of both recognizing that at the end of the day, it is all about profits. E-commerce will have to play a more significant role in our future and the tiredness of our current product offering needs to be quickly upgraded to be able to compete in an increasingly competitive environment."

This document is attached as Exhibit G.

In summary, BNY Mellon's non-negotiated/standing instruction FX practices have served to fill the bank's coffers at the direct expense of the custodial client victims. Further, BNY Mellon's actions were taken knowingly and willfully, and although the bank (formerly) advertised these FX services as "free of charge" and to be done according to "best execution standards," it secretly disavowed these promises with its back-room profit-taking. Every dollar of non-negotiated/standing instruction FX profit is a dollar taken from a custodial pension client's funds. As public pensions nationwide have struggled to meet level funding requirements (and as many have also significantly increased their international holdings), the

bank has achieved record FX profits, glad-handing pension clients with "relationship managers" that foster good will but keep the pensions in the dark.

We look forward to discussing this supplement further with you, should you have any questions.

Sincerely,

Michael A. Lesser

cc: Philip Michael
Marcella Auerbach

[redacted]

March 29, 2011

Pamela Jo Bondi
Florida Attorney General
State of Florida
The Capital, PL-0
Tallahassee, FL 32399-1050

Dear Ms. Bondi,

My name is [redacted]. I was a Corporate Foreign Exchange Salesperson with BNY Mellon. My BNY Mellon Employee Number was [redacted]. I was based in Pittsburgh, Pennsylvania and reported to [redacted]. I was part of Jorge Rodriguez's team and Richard Mahoney who was Head of Global Markets.

The reason why I am writing to you is to inform you that you can use me as a witness in your present lawsuit against BNY Mellon relating to false foreign currency trades.

I was with the bank from [redacted] to [redacted]. I used many of the organization's foreign currency systems including Charlie, Wall Street Systems and iDealForex. I was also trained in committing fraud using various strategies and to the bank's corporate foreign exchange clients. These were mainly large Fortune 500 corporations based in the United States. I have 15 years of Corporate Foreign Exchange Sales experience with half of that coming from [redacted]. I can tell you firsthand and without any hesitation that the fraud is prevalent throughout BNY Mellon's Foreign Exchange Group. I can also share with you that top management was aware of the fraud the entire time.

It is rare opportunity for you to have someone like me on your side. BNY Mellon's foreign exchange group was very small. I was only 1 of 3 people in the entire bank who focused exclusively on the corporate client segment. We used the same systems and fraudulent strategies on the corporate clients as was used on the pension fund clients.

You are welcome to pass this information along to other parties.

Thank you.

Sincerely,

[redacted]

[redacted]

ATTORNEYS AT LAW
Thornton & Naumes LLP

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J. Mark Kraus, Esq.
Assistant Attorney General
Economic Crimes Division
Office of the Attorney General
State of Florida
The Capitol, PL-01
Tallahassee, FL 32399-1050

Russell S. Kent, Esq.
Special Counsel for Litigation
Office of the Attorney General
State of Florida
The Capitol, PL-01
Tallahassee, FL 32399-1050

Re: ***The State of Florida, ex rel. FX Analytics v. Bank of New York Mellon., et al.; [UNDER SEAL]: Supplemental Disclosure***

Dear Attorneys Kraus and Kent:

Relator is providing this supplemental disclosure of relevant information in the above-referenced *qui tam* case pursuant to the joint prosecution privilege. This letter contains information supplemental to Relator's disclosure that has come to the attention of the Relator through the normal course of employment.

Most significantly, Relator wishes to report on a development involving the Pittsburgh Transaction Desk's pricing of trades done for the same client or investment manager. As Relator disclosed previously, the bank explicitly promised "netting" as a service offered to clients through the bank's Standing Instruction trade execution channel ("Clients benefit from aggregation and netting of trades . . .") Exhibit A to Relator's Report. Thus, it was the expectation of custody clients that a buy of 5 and a sell of 2 would result only in a single trade for a buy of 3. As Relator explained during the initial interview with your office, no netting occurs at the bank; each potentially netted trade results in two transactions instead of one. There are two ways that the three primary members of the Pittsburgh Transaction Desk price "netted" deals in this fashion.

Sue Pfister takes the larger part of the trade, in this example, the buy of 5, and prices it as the bank prices all other trades – at the end of the range of the day so that the bank makes the biggest profit. She will then take the other, smaller, part of the trade and price it closer to the middle of the day's range. [redacted] and [redacted], instead of pricing one part of a "netted" trade at the end of the range, simply spread the two parts of the transaction at a minimum of 50 basis points, capturing that range for the bank. So the buy would occur at a price 50 points higher than the sell. Both of these techniques secure large profits for the bank. Either method is also contrary to the bank's explicit statements regarding netting, as well as any eventual defense offered by the bank as to why Standing Instruction trading *may* provide some additional value-added benefit to the client. As can be seen, the only added value inures to the benefit of the bank.

Relator has just learned that [redacted] has been actually netting trades, by investment manager, for the last few months. It appears that this is a mandate that he took upon himself. Relator reports that [redacted] somehow uses broker codes to do the netting, but that in Relator's estimation, less than half of the indirect deals have such a code. In any case, [redacted]'s netting came to light last week and caused an uproar in the FX department. Relator is not yet aware of what action the bank will take with respect to netting or whether [redacted] has been instructed to return to "normal" netting pricing.

Richard Mahoney recently addressed the FX trading room. He informed everyone that BNYM had received sixteen subpoenas to date. He mentioned that one pension wanted to know about all changes made to their website. Among other things, he also said that "we do not have to tell anyone how much money we make on our dealings," while reiterating that the bank is a principal and not an agent on FX trades. He added that "we have not done anything wrong." These comments are consistent with Mahoney's other mantra, namely, that "the greatest risk to the bank is reputational." This is something he has said many times.

When inquiries have come in to the bank asking for specific information, including profit information, Mahoney wants to tell them to "go pound sand." On this point, he disagrees with the head of the Asset Servicing / Custody group, [redacted] (BNYM link here: http://www.bnymellon.com/about/management[redacted]), who is afraid of upsetting custody clients. It seems to be common knowledge that the FX department directly contributes 20% of Asset Servicing's bottom-line profit each year. That is, FX kicks this money back to Asset Servicing in nominal recognition of the fact that the lucrative non-negotiated/standing instruction trades come through the Asset Servicing pipeline. As you may recall, the FX department may under-estimate FX revenue for a particular client so that Asset Servicing is not fully aware of how much money the FX department makes.

On a related point, Relator reports that FX accounts for 22% of the bank's entire profits. As previously stated, Relator also Reports that at least 70% of the FX profits come from non-negotiated / standing instruction FX trades. Combined, the bank employs 300 people in FX. Worldwide, the bank employs over 40,000. Reviewed at an even more granular level, it is only

the dozen or so Transaction Desk employees at the two banks that price the indirect FX that generate this enormous profit for the bank.

The bank is working on a letter to clients allegedly spelling out the bank's FX pricing policies. It was to be signed by [redacted], [redacted] (a managing director based in New York), and [redacted] (FX in Boston). All of these names can be found on the following webpage: https://gm.bankofny.com/misc/ContactUs.aspx. Relator learned that [redacted] refused to sign the letter "for a variety of reasons." Relator believes that the bank cannot deliver what is promised in the letter, i.e. that the bank does not have the technology or systems in place to deliver what is promised.

Mahoney also informed staff that at BNYM it is the FX department that "owns" the problem of the inquiries into the bank's practices. He told people that at State Street, their asset servicing department is taking the lead. He also emphasized that [redacted] is having nothing to do with the situation.

Mahoney also discussed the bank's lower 1st quarter profit from FX. Mahoney said that he "bet that [redacted] is not pricing as aggressively as he has in the past." [redacted] is the head of FX at the BNYM Brussels desk. Mahoney said that "it is human nature to back off on the pricing." Relator also reports that the Brussels office has received some direct inquiries from at least one European investment manager that questioned BNYM's FX pricing, which may have influenced [redacted]'s pricing.

Please let us know if you have any questions about this supplement.

Sincerely,

Michael A. Lesser

cc: Philip Michael
Marcella Auerbach